IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.703 OF 2005

IN

SUIT NO.3181 OF 1992

Bimla Singh Ramlakhan Singh. ...Plaintiff.

Vs.

Smt.Ramrati Kamala Singh & others. ...Defendants

Mr.R.P.Oza with R.S.Upadhyay,for Plaintiff.

Mr.Abhay Pande,for Defendant nos.5 to 10.

Mr.D.S.Sakhalkar i/b. A.G.Shah, for Defendants 1 & 2.

CORAM: D.K.DESHMUKH, J.

DATED: 26th April,2006

P.C.:-

1. This is a notice of motion taken out by the plaintiff for an order of temporary injunction restraining defendant nos.1 to 4 from transferring the property. The property is the house property.

According to the plaintiff, he is joint owner of the property. According to the averments in the plaint, the original owner of the property was one Mr.Ramchandra Gangaram Tawade. In the year 1953, he mortgaged the property to one Mr.Haji Ismail Hassan Ladak and that Haji Ismail Hassan Ladak pursuant to the power given to him by mortgage deed auctioned the property on 28.12.1968. In the auction, according to the plaintiff, the plaintiff and the deceased defendant nos. 1 and 2 jointly bid for purchasing the property. The property was purchased for Rs.50,500/-. According to the plaintiff, he became the joint owner of the property having 1/3rd share. The plaintiff further states that the mortgage of the property which was in favour of Haji Ismail Hassan Ladak was purchased by the plaintiff and the original defendant nos.1 and 2 by deed of transfer of mortgage deed dt. 27.4.1968 and therefore, also the plaintiff has 1/3rd share in the property. According to the plaintiff, the plaintiff was carrying on business with the original defendant nos. 1 and 2 who are his brothers and that the purchase price of the property was paid out of the joint funds of the business that was being carried on by three brothers. Admittedly the sale deed of the property is in the name of the original

defendant no.1 and it has been registered in the year 1970. The suit has been filed in the year 1992. There is no explanation to be found if according to the plaintiff's allegations the mortgage of the property was transferred in favour of defendant nos.1 and 2 and the plaintiff in April,1968, why the plaintiff in paragraph 3 states that the original mortgagee held auction of the property for sale in December,1968. The plaintiff has also not placed any document on record to show that the joint business that the plaintiff was carrying on with defendant nos.1 and 2 had enough funds to pay for purchase of the property in December,1968. The plaintiff has also not produced on record any document to show that the plaintiff had participated in the auction conducted in the month of December,1968. The plaintiff states that the defendant no.1 was his elder brother, therefore, he had faith in him and therefore, he assumed that the defendant no.1 must have prepared the sale deed of the property in the name of all the brothers and that is how the plaintiff explained his silence for the long period of 22 years. However, some of the letters which have been produced on record alongwith the affidavit of the heirs of the original defendant no.2 reveal a

different picture. Perusal of the letter dated 5.4.1969 written by the original defendant no.1 to his own father shows that in the business that he was carrying on with his brothers there was no enough money, and therefore, the defendant no.1 had to collect money for buying the property. The letter further shows that the plaintiff was demanding accounts from the original defendant no.1 and he was calling the original defendant no.1 a thief. There is no documentary evidence on record produced by the plaintiff to show that the money for purchase of the property was paid by defendant no.1 from the joint fund. Basically it is not established that there was any joint fund of the plaintiff and the defendant nos. 1 and 2. There is no document on record to show that the plaintiff had participated in the auction as alleged by the plaintiff alongwith original defendant nos. 1 and 2. It is difficult to believe that though the registered sale deed was in the name of original defendant no.1, the plaintiff believed for 22 years that the sale deed is in the name of all the three brothers. It is to be borne in mind that the case of the plaintiff is against the recitals in a registered document.

2. Taking overall view of the matter, therefore, in my opinion, there is no prima facie case made out by the plaintiff that the suit property is a joint property of the plaintiff and the original defendant nos. 1 and 2, and therefore, there is no question of granting any interim order in favour of the plaintiff. The notice of motion is disposed of.